

REMARKS

The Final Office Action of April 21, 2009, has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested. No claims have been amended. Claims 1-7, 11-17, and 21-27 remain pending upon entry of the present paper.

Rejections under 35 U.S.C. § 101

Claims 21-27 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. More particularly, the Action asserts that “tangible machine-readable storage medium” could be one of signals or other forms of propagation and transmission media. See Action, page 2. Applicant traverses.

The claims recite “tangible machine-readable storage medium” which as established by case law, does not include propagation signals and carrier waves. See *In re Nijten*, 84 USPQ 2d. 1495, 1502 (Fed. Cir. 2007) (articles of manufacture are tangible articles whereas electric or electromagnetic transmissions are not tangible). Notably, the specification does not purport that signals or other forms of propagation and transmission media constitute “tangible machine-readable storage medium”. Indeed, the claims are limited to tangible machine-readable storage mediums which do not include electric or electromagnetic transmissions. Accordingly, claim 21 is directed to statutory subject matter. Withdrawal of this rejection is respectfully requested.

Rejections under 35 U.S.C. § 112

Claims 1-7, 11-17 and 21-27 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. More particularly, the Action alleges that the claims include subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time of the invention, had possession of the claim invention. Applicants traverse.

Support for the feature of “wherein the non-textual attribute after each modification visually indicates a number of times the object has been selected” is at least found at the abstract, reproduced below.

Each subsequent selection will modify the attribute further, allowing the user to identify that the object was selected a number of times. In one embodiment, the attribute will continue to be modified until a specific expiration limit has been reached.

Rejections Under 35 U.S.C. § 103

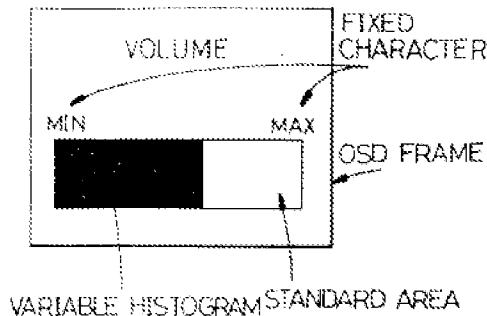
Claims 1, 11, and 21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jeong et al. (U.S. Patent No. 6,256,027, hereinafter “Jeong”) in view of Schein et al. (U.S. Patent No. 6,075,575, hereinafter “Schein”). Applicant respectfully traverses this rejection for at least the following reasons.

Claim 1 recites, *inter alia*,

modifying a non-textual attribute associated with the object by an incremental amount for each of at least two times that the object is selected, wherein the non-textual attribute after each modification visually indicates a number of times the object has been selected.

Such features are not described in Jeong and Schein, either alone or in combination. For example, Jeong is directed to displaying an on-screen display menu enabling a user to conveniently adjust the selected function. See Abstract; see also e.g., Jeong, FIG. 3A, reproduced below.

FIG. 3A



Indeed, FIGs. 3B-3G describe different designs which may be used to display the volume selected by the user. Notably, such displays fail to teach or suggest modifying a non-textual attribute associated with the object by an incremental amount for each of at least two times that the object is selected, wherein the non-textual attribute after each modification *visually indicates*

a number of times the object has been selected as recited in claim 1. Indeed, Jeong suffers from the same issues as Schein as discussed in the Response of February 6, 2009. Jeong describes that the user may conveniently adjust the volume and recognize how much louder or softer the user can further adjust the volume based on the displayed variable graph (e.g., FIG. 3A). However, the level of volume shown in FIGs. 3A-3G fails to show the number of times the volume button has been selected. Indeed, Jeong uses the term “adjustable” in the disclosure, and it is well known that a user may increase or decrease volume of a device as the user desires. That is, considering the scenario where the user increases the volume and then subsequently decreases the volume back to the original level, the user would not be able to discern that the volume has been adjusted twice based solely on the displayed object. As such, Jeong fails to teach or suggest that each modification *visually indicates* a number of times the object has been selected as recited in claim 1.

Schein fails to cure the deficiencies of Jeong. As discussed in the Applicant’s previous response of February 6, 2009, after a user clicks on a scroll bar, the position of the scroll bar does not visually indicate to the user the number of times the scroll bar has been clicked. At best, the user may deduce in Schein that the scroll bar has been clicked; however, a user would not know the number of times that the scroll bar has been clicked unless the user independently kept track.

Therefore, even assuming, but not conceding that a combination of Jeong and Schein would have been appropriate, such a combination would have failed to result in the features of claim 1.

Independent claims 11 and 21 recite features similar to the distinguishing features of claim 1, and are allowable for at least the same reasons as claim 1 above.

CONCLUSION

All rejections having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same. Should the Examiner find that a telephonic or personal interview would expedite passage to issue of the present application, the Examiner is encouraged to contact the undersigned attorney at the telephone number indicated below. Applicant looks forward to the passage to issue of the present application at the earliest convenience of the Office.

Respectfully submitted,
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Date: July 20, 2009

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